In the High Court for the States of Punjab and Haryana, at Chandigarh.

C.R..No. 1709 of 2007 (O&M)
Decided on April 19,2007

Gurmail Kaur -- Petitioner.

vs.

Gurcharan Singh and others -- Respondents.

Present: Mr.Sunil Chadha,Advocate,for the petitioner.

Pritam Pal,J:(Oral)

This petition by the petitioner/plaintiff, filed under Article 227 of the Constitution of India, is directed against order dated February 28,2007, passed by learned Addl. Civil Judge (Senior Division) Ludhiana,whereby an application dated January 22,2007,seeking following amendment in Civil Suit No. 848 dated August 26,1997, for declaration with consequential relief of permanent injunction filed by the plaintiff, was dismissed.

"*After words " and for grant of permanent injunction":-*

" and further relief of Declaration that judgment and decree dated. 7.2.1992 passed by the Court of Sh. Hukam Chand, Sub Judge Ist Class, Ludhiana, in Civil Suit titled as Sadhu Singh and others v. Gurmai Kaur is void, ab-initio, illegal without jurisdiction, non-est and is liable to be ignored qua rights of the plaintiff and the alleged oral settlement dated 1.3.1991

and the alleged oral family settlement dated 1.2.1991, are without any basis, void, ab-initio, illegal and there was no occasion for plaintiff to enter any family settlement either oral or written as there exists no question of any joint-ness between the parties as no pre-existing right ever existed in favour of the present defendants qua the property in dispute or land inherited by the plaintiff from her father, and sale deed referred in the written statement dated 4.12.1997 and 19.12.1997 loses its significance in favour of challenging abovesaid judgment and decree, family settlement etc, and as such has no bearing"

(ii)After paragraph no.3,the following paragraph No.3-A may kindly be allowed to be added:-

"*3-A That the judgment and decree dated 7.2.1992 passed by the Court of Sh. Hukam Chand, Sub Judge Ist Class, Ludhiana in Civil Suit titled as Sadhu Singh and others v. Gurmail Kaur is void, ab-initio,illegal without jurisdiction, non-est and is liable to be ignored against rights of plaintiff as there was no occasion at the part of the plaintiff to enter into any family arrangement either oral or written and as such this judgment and decree do not effect the rights of plaintiff and is liable to be set aside and ignored qua the rights of plaintiff. It is worth mentioning that there was no pre-existing right in favour of the defendants and there was no occasion for making any family settlement and the act at the*

part of the defendant in manipulating the alleged family settlement dated 1.3.1991 is also without jurisdiction, void ab-initio and defendants cannot be allowed to take any benefit out of it and as such, these have been procured in order to defeat the rights of the plaintiff"

iii) *In para No.4, the following may kindly be allowed to be added:-*

" *and the cause of action further accrued in favour of the plaintiff and against the defendants on 1.3.1991 when alleged family settlement has been set up, on 7.2.1992 when judgment and decree has been passed by the Court of Sh. Hukam Chand, Sub Judge Ist Class, Ludhiana and the cause of action is recurring nature*".

iv) In the prayer clause, the following averments may kindly be allowed to be added:-

After words " and for decree of permanent injunction":-

" *and further a decree of Declaration that judgment and decree dated 7.2.1992 passed by the Court of Sh. Hukam Chand, Sub Judge Ist Class, Ludhiana in Civil Suit titled as Sadhu Singh and others vs. Gumail Kaur, is void ab-initio, illegal without jurisdiction, non -est and is liable to be ignored qua rights of the plaintiff and the alleged oral family settlement dated 1.3.1991 and the alleged oral family settlement dated 1.2.1991 are without any basis, void ab-initio,illegal and there was so occasion for plaintiff to enter*

into any family settlement either oral or written as there exists no question of any joint-ness between the parties as no pre-existing right ever existed in favour of the present defendants qua the property in dispute or land inherited by plaintiff from her father, and sale deeds referred to written statement dated 4.12.1997 and 19.12.1997 loses its significance in view of challenging abovesaid judgment and decree, family settlement etc, and as such has no bearing be passed in favour of the plaintiff and against the defendants".

Without going into any further details, suffice it to say that the aforesaid suit was filed by the petitioner before the trial Court in the year 1997 and,thereafter, written statement was filed on January 23,1998. In the written statement, the respondents had disclosed all the facts pertaining to the decree dated February 07,1992 and the sale transaction between the parties. Even otherwise, all these facts were within the knowledge of the petitioner because she was also a party to the earlier decree passed on the basis of family settlement. Not only that, after filing of the written statement in the year 1998, the petitioner/plaintiff had also an opportunity to file replication. There also, it appears that she (petitioner) had not come forward to rebut the aforesaid points of pleadings contained in the written statement at the time of filing replication for the reasons best known to her and her counsel. Now, after expiry of more than nine years, when the case has ripen for final arguments before the trial Court, the aforesaid application seeking the

aforesaid amendment in the plaint has been moved by the petitioner, in the year 2007.

Learned counsel for the petitioner contended that the law for amendment pleadings is very liberal and the amendment sought by the petitioner is necessary for just and proper adjudication of the case pending before the trial Court. So, in such circumstances, the impugned order dismissing the application for amendment, is liable to be set aside. In support of his arguments, learned counsel has relied upon following catena of authorities:-

Milkha Singh v. Parshotam Dass 2007 (1) RCR (Civil) 495;

State of A.P and others v.Pioneer Builders, A.P. 2007(1) RCR (Civil) 240;

Balbir Singh v. Kashmiri Lal 2007 (1) Civil Court Cases, 759; (P&H)

State Bank of Hyderabad v. Town Municipal Council,2007 (1) Civil Court Cases 704 (S.C)

I have given my thoughtful consideration in the matter and have also gone through the above cited rulings and find that the facts of the quoted rulings are quite at variance from the facts of the case in hand. Hence, no benefit can be derived by learned counsel for the petitioner from the observations of their Lordships made in the above cited rulings.

In the case in hand, it is not disputed that the petitioner had the knowledge of all the facts, which are now being sought to be included by way of amendment in the plaint, at the time of filing of the

suit, but no explanation whatsoever has been put forth as to why those facts were not pleaded in the plaint. It is also apparent that even after disclosing all the facts in the written statement, no steps were even taken by the petitioner till the case reached at a final stage of arguments. No doubt, there is no straight-jacket formula or rules with regard to allowing or disallowing amendment of pleadings, but at the same time, it depends upon the facts and circumstances of each case. It is also well settled that time barred claim cannot be allowed to be pleaded by way of amendment. Even otherwise, a debatable question of limitation based on disputed facts, must be considered judiciously for allowing or disallowing the amendment, keeping in mind cause and interest of justice.

Here, in the instant case, if the aforesaid amendment sought by the petitioner is allowed, the same would not only change basic structure and nature of the suit, but that would also compel the trial Court to start *denovo* trial of the case.

Faced with the above situation, I am of the considered view that allowing of amendment sought by the petitioner, which is not necessary for proper adjudication of the case, would further cause delay in the decision of the case before the trial Court.

In view of my foregoing discussion, I find no illegality or impropriety in the impugned order. Hence, this Civil Revision is hereby dismissed in *limine*.

April 19,2007 (Pritam Pal)
RR Judge